

****E-filed 2/4/11****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAN M. SCHIEBERL,

No. C 11-80003 MISC RS

Plaintiff,

v.

**ORDER DENYING PETITION TO
QUASH**

UNITED STATES,

Defendant.

Jan M. Schieberl, appearing *in pro se*, moves to quash summons issued by the Internal Revenue Service to Bank of America and City National Bank seeking records pertaining to any accounts he may hold at those institutions. Pursuant to Civil Local Rule 7-1(b), this matter is suitable for disposition without oral argument, and the hearing set for February 10, 2011, is hereby vacated.

Describing himself as “unschooled in the law,” Schieberl requests that the Court look to the substance of his pleadings rather than the form. The Court has done so, carefully examining whether there is any basis for the relief Schieberl seeks.¹ Schieberl’s sole ground for objecting to the summons is his contention that 26 U.S.C. § 7602, under which they were issued, is “interpretative” rather than “substantive,” and that it therefore lacks force of law, legal effect, and

¹ For this reason, the merits of Schieberl’s petition have been considered, notwithstanding the government’s objection that it was not properly served, which would serve as an independent basis to deny relief.

1 does not create any legal duties that apply to him. Schieberl has failed to appreciate the difference
2 between a *regulation* promulgated by an administrative agency, and a *statute*, enacted by Congress
3 and signed into law by the President. The case authority Schieberl cites relates to administrative
4 regulations, which indeed can be either “interpretive” or “substantive.” While Schieberl is correct
5 that substantive regulations can only be properly adopted in compliance with the Administrative
6 Procedures Act and with appropriate notice published in the Federal Register, those procedural
7 requirements do not govern the enactment of statutes by Congress.

8 26 U.S.C. § 7602 has the “force of law” because it is a law, duly enacted by Congress. The
9 distinction between “interpretative” and “substantive” regulations on which Schieberl is attempting
10 to rely simply is not applicable. The statute expressly authorizes the IRS to issue summons such as
11 those Schieberl is challenging, and he has not argued that they are defective or improper for any
12 other reason.

13 To the extent Schieberl may also be arguing that an agency may never act directly under the
14 authority of a statute without first promulgating associated regulations, he is mistaken. While
15 Congress sometimes enacts statutes that call for an agency to develop implementing regulations, 26
16 U.S.C. § 7602 includes no provisions that would require the IRS to adopt any regulations before
17 exercising the power granted by the statute to issue summons. Accordingly, the petition to quash is
18 denied. The Clerk shall close the file.

19
20 IT IS SO ORDERED.

21
22 Dated: 2/4/11

23 
24 RICHARD SEEBORG
25 UNITED STATES DISTRICT JUDGE
26
27
28

THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:

Jan Schieberl
7172 Regional Street
Suite 440
Dublin, CA 94568

DATED: 2/7/11

/s/ Chambers Staff

Chambers of Judge Richard Seeborg